

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MC ALLEN DIVISION

JOSE G. PEREZ, ET AL.,	)	CASE NO: 7:13-CV-00261
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	McAllen, Texas
	)	
LUPE TREVINO, ET AL.,	)	Thursday, September 5, 2013
	)	(10:13 a.m. to 10:44 a.m.)
<u>Defendants.</u>	)	

INITIAL CONFERENCE

BEFORE THE HONORABLE RANDY CRANE,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Rick Rodriguez
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Proceedings recorded by electronic sound recording;  
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APPEARANCES FOR:

Plaintiffs:

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McAllen, TX 78501-6640

RICHARD R. ALAMIA, ESQ.  
113 S. 10th St.  
Edinburg, TX 78539

Defendants:

EILEEN M. LEEDS, ESQ.  
JOSE GARZA, ESQ.  
Guerra, Leeds, Sabo, et al.  
1534 E. 6th St., Ste. 200  
Brownsville, TX 78520

PRESTON EDWARD HENRICHSON, ESQ.  
222 W. Cano  
Edinburg, TX 78539

1 McAllen, Texas; Thursday, September 5, 2013; 10:13 a.m.

2 (Call to Order)

3 THE COURT: All right, 13cv261 *Jose Perez, and others*  
4 *versus Sheriff Lupe Trevino*. The County, the City of Mission,  
5 I think there are a number of defendants here. Let's see --  
6 well, those are the only three: Trevino, the City of Mission,  
7 County. All right. Announcements, please, who everybody  
8 represents?

9 MR. GRISSOM: Good morning, your Honor, my name is  
10 Jim Grissom on behalf of the plaintiff.

11 THE COURT: All right.

12 MR. ALAMIA: Richard Alamia on behalf of the  
13 interveners.

14 THE COURT: The interveners, all right.

15 MR. HENRICHSON: Preston Henrichson, your Honor, here  
16 on behalf of the sheriff and the County.

17 THE COURT: All right.

18 MS. LEEDS: Eileen Leeds and Jose Garza on behalf of  
19 the City of Mission.

20 THE COURT: Okay. Let's start with the interveners'  
21 issue. The interveners are both people who claim the same  
22 thing, essentially they had their civil rights violated by  
23 Jonathan Trevino and --

24 MR. ALAMIA: Panama Unit.

25 THE COURT: Yeah, members of the Panama Unit.

1           **MR. ALAMIA:** Yes.

2           **THE COURT:** Although he particularly was involved in  
3 each of the incidents you mentioned.

4           **MR. ALAMIA:** That's correct.

5           **THE COURT:** The defendants raise two points. One is  
6 that at least on one of these gentlemen who's attempting to  
7 intervene, Mr. Rivera, that he actually already filed a lawsuit  
8 over at the County Court at Law and that suit was dismissed.

9           **MR. ALAMIA:** On the basis of sovereign immunity,  
10 Judge.

11           **THE COURT:** Well, see, I couldn't -- somebody sent me  
12 the dismissal order. I think it was you, actually, but it  
13 doesn't say anything. It just says suit is dismissed. I  
14 couldn't tell what it was for, whether it was on the merits or  
15 not.

16           **MR. ALAMIA:** No, it was not. It was not even --

17           **THE COURT:** Well, sovereign immunity would be on the  
18 merits.

19           **MR. ALAMIA:** Well, it was not litigated. The Court  
20 ruled that it was dismissed solely based on sovereign immunity.

21           **THE COURT:** All right.

22           **MR. ALAMIA:** On the County and the City. That's what  
23 the ruling was.

24           **THE COURT:** I mean it doesn't say that in the ruling.  
25 It just says it's dismissed. It doesn't say that anywhere in

1 the ruling, so I couldn't tell why the judge dismissed it. I  
2 didn't know if it was because you didn't show up to a court  
3 hearing or whatever, you didn't pay a fee or something. It  
4 doesn't really -- it doesn't tell me anything.

5 **MR. ALAMIA:** But it was dismissed because of the  
6 defense of sovereign immunity on behalf of the County and the  
7 City.

8 **THE COURT:** Well, the City I didn't see was actually  
9 sued. I thought only Mr. Trevino was sued -- Jonathan Trevino  
10 was sued -- and the County was sued. That's how I read the  
11 pleadings. Jonathan Trevino in his individual and official  
12 capacity, whatever that means, and the County of Hidalgo. I  
13 did not see that the City of Mission had been named in that  
14 suit. They did not. So, they would not be someone who could  
15 raise the res judicata defense as I could see it. But again, I  
16 was given very little information.

17 So, we have that one issue with Mr. Rivera. The  
18 issue we have with both of them, though, that maybe is  
19 dispositive and we don't even need to reach the res judicata  
20 issue, is statute of limitations. In a 1983 action there is no  
21 federal statute of limitations. What the rule is is that you  
22 look to the State to see what its personal injury statute of  
23 limitations is, which in Texas is two years, and Mr. Rivera,  
24 his incident was in early 2011 and you didn't attempt to  
25 intervene here until July of 2013. So, more than two years had

1 already lapsed between the event where he claims he was  
2 assaulted.

3 **MR. ALAMIA:** Can I address that?

4 **THE COURT:** Right. You sort of -- you gave me some  
5 dates, but I didn't really see how that affected him. And then  
6 maybe the same argument, but the other gentleman who also was,  
7 whatever, roughed up allegedly, his incident happened in May,  
8 although I think you alleged it happened in November. But it  
9 actually -- all the documents that were produced about the  
10 arrest and incident, the seizure of the marijuana, were dated  
11 late May of 2011, again more than two years prior to your  
12 filing suit in this court.

13 So, if you want to address the statute of limitations  
14 issue?

15 **MR. ALAMIA:** Let me address that. Judge, the  
16 original pleadings in state court were solely based on assault,  
17 wrongful imprisonment.

18 **THE COURT:** Uh-huh.

19 **MR. ALAMIA:** The civil rights issue did not arise  
20 until our client became aware through the Panama Unit publicity  
21 that happened in a newspaper --

22 **THE COURT:** Uh-huh.

23 **MR. ALAMIA:** -- which happened only a few months ago.

24 **THE COURT:** Uh-huh.

25 **MR. ALAMIA:** That was when they became aware of the

1 pattern that was being used by the Panama Unit and Mr. Trevino;  
2 that's why they filed the civil rights lawsuit.

3 Now, we contend as a result of they becoming aware at  
4 that time, within a few months when it happened --

5 **THE COURT:** Uh-huh.

6 **MR. ALAMIA:** -- that it meets the statute of  
7 limitations. The statute of limitations hadn't run yet in  
8 reference to the civil rights violation. That's why we  
9 intervened.

10 **THE COURT:** Well, so, I mean, it's a two-year  
11 statute. It runs from the date their cause of action accrued,  
12 which I think we would all say that -- even you would probably  
13 agree -- that that happened from the date of this event where  
14 they were assaulted and then wrongfully arrested and  
15 imprisoned. And so, what you're saying is, well, if they  
16 didn't discover that they had a civil rights claim until  
17 recently --

18 **MR. ALAMIA:** That's correct, because --

19 **THE COURT:** -- and I don't know that that tolls --

20 **MR. ALAMIA:** Well, Judge, they did not become aware  
21 until all the publicity came out. Now, if you look at the  
22 pleadings in state court, there were no pleadings of civil  
23 rights violations because they were not aware that there was.

24 **THE COURT:** Right. So, what you're saying is they  
25 didn't know that really they were the victims of these rogue

1 cops that were trying to steal their marijuana.

2 **MR. ALAMIA:** That's correct.

3 **THE COURT:** They didn't learn that until --

4 **MR. ALAMIA:** Until he was arrested

5 **THE COURT:** -- until a criminal prosecution --

6 **MR. ALAMIA:** -- and indicted and the criminal  
7 procedure started.

8 **THE COURT:** And how -- even with due diligence, how  
9 could he have ever known that these cops were not there on  
10 legitimate law enforcement business but because they were in  
11 the business of stealing marijuana --

12 **MR. ALAMIA:** That's correct.

13 **THE COURT:** -- and assaulting people. All right.  
14 So, that's an interesting argument. I just need to do some  
15 research whether that's enough, because you can tell when the  
16 defendant is doing things to secret or hide the actionable  
17 conduct. So, clearly they were attempting to cover their  
18 tracks and make their illegal activities seem legitimate law  
19 enforcement --

20 **MR. ALAMIA:** Judge, even I did not know, as an  
21 attorney, that these officers were doing what they were doing  
22 until they were indicted.

23 **THE COURT:** Uh-huh.

24 **MR. ALAMIA:** And then what do you expect my clients  
25 being -- you know, they weren't aware until they were indicted.



1           **THE COURT:** Right.

2           **MR. ALAMIA:** So, we're saying that the time that they  
3 became aware that the civil rights issue, the statute runs when  
4 they became aware of the stealing of the drugs --

5           **THE COURT:** Right.

6           **MR. ALAMIA:** -- the process. See what I'm saying,  
7 Judge?

8           **THE COURT:** Sure, I understand.

9           **MR. ALAMIA:** So, we're saying the statute of  
10 limitations does not apply as a result of that situation.

11           **THE COURT:** I think I'm probably going to need some  
12 more information on this. But I think both of you know what  
13 the issues are. I mean, is there tolling here because he  
14 didn't know -- they didn't know that these police officers,  
15 self described as rogue police officers, were actually doing  
16 these operations for their own personal financial gain rather  
17 than legitimate law enforcement. That wasn't discovered until  
18 a federal law enforcement investigation revealed that and they  
19 could not otherwise -- they didn't have otherwise their own  
20 resources to figure that out or to determine that? I don't  
21 know.

22           **MR. HENRICHSON:** Judge, I'd like to respond. I think  
23 the argument is ludicrous because, in the first place both Mr.  
24 Course and Mr. Rivera --

25           **THE COURT:** Uh-huh.

1           **MR. HENRICHSON:** -- were arrested, were taken to  
2 jail, were charged --

3           **THE COURT:** Right.

4           **MR. HENRICHSON:** -- pled guilty of crimes. Their  
5 cause of action has nothing to do with whether or not -- they  
6 don't even allege in this case that their drugs were stolen and  
7 that that's the reason that they're suing. They're suing  
8 because they say they were roughed up or they were slapped or  
9 they were mistreated, which they knew at the time.

10          **THE COURT:** Uh-huh.

11          **MR. HENRICHSON:** And if they wanted to know whether  
12 there was a pattern of that, they could have sued and sought  
13 discovery on those issues and made those allegations. Anyone  
14 who is a victim of 1983 --

15          **THE COURT:** This would be Fourth Amendment sort of  
16 excessive force, anyway.

17          **MR. HENRICHSON:** Yes.

18          **MS. LEEDS:** Or false arrest.

19          **THE COURT:** So, you would know -- you know got beat  
20 up.

21          **MR. HENRICHSON:** Exactly.

22          **THE COURT:** It's not really -- well, false arrest?  
23 Yeah, you would probably know that, as well. Did they -- I was  
24 curious when I saw that they only reported that they had seized  
25 90 pounds of marijuana, I wondered whether there was -- was

1 there a lot more there and these agents kept some? I mean,  
2 your clients allege that on the -- that's on the --

3 **MR. HENRICHSON:** They've not made such allegations,  
4 your Honor.

5 **THE COURT:** All right. So, they're not claiming some  
6 kind of theft or taking of their property.

7 **MR. HENRICHSON:** And, in fact, just because there's  
8 some evidence and some now public knowledge that some of the  
9 time these officers were doing rogue things, it doesn't mean  
10 that every time they arrested someone and took them to jail and  
11 they pled guilty that they were -- that that was something  
12 illegal. In other words, these officers --

13 **THE COURT:** Did do some legitimate law enforcement  
14 things.

15 **MR. HENRICHSON:** They were legitimate law enforcement  
16 officers who legitimately enforced the law most of the time.  
17 The fact that they went rogue on occasion and was embarrassing  
18 to --

19 **THE COURT:** You say most of the time. I think people  
20 might debate you on that.

21 **(Laughter)**

22 **MR. HENRICHSON:** Well, I think that the numbers will  
23 bear me out. But Judge, it's a matter of public perception --

24 **THE COURT:** Yeah.

25 **MR. HENRICHSON:** -- based upon what's been in this

1 court.

2 **THE COURT:** You'd have to see the numbers.

3 **MR. HENRICHSON:** But at the same time, these cases in  
4 this court at this time are cases, are legitimate cases where  
5 the defendants actually pled guilty --

6 **THE COURT:** Uh-huh.

7 **MR. HENRICHSON:** -- and the only time -- they were  
8 just opportunistically seeking to --

9 **THE COURT:** Well, no doubt.

10 **MR. HENRICHSON:** -- to coattail the criminal case.

11 **THE COURT:** Right. But the question is do they have  
12 the legal right to do so and the primary issue here would be  
13 statute of limitations bar. And to the excessive force claims,  
14 there's no real tolling that would be available. They knew  
15 that they had been abused, beaten up, had excessive force used  
16 against them at the time it occurred. It wouldn't matter  
17 whether the officers were there legitimately or not  
18 legitimately. They know that they've been assaulted.

19 Now, if they had had property seized or taken from  
20 them that they thought had been taken for legitimate law  
21 enforcement reasons and it turned out that it had just been  
22 stolen and resold, maybe that was something they might not know  
23 about at the time. But here all you're claiming is excessive  
24 force on both of them; I mean, that they were both roughed up.  
25 There isn't any claim that they had their marijuana stolen from

1 them. Right? I mean, they're just both --

2 **MR. ALAMIA:** Well, your Honor --

3 **MR. HENRICHSON:** I don't think they could --

4 **THE COURT:** And really none of them were really  
5 roughed up that day. One of them was --

6 **MR. ALAMIA:** Well, the thing is that --

7 **THE COURT:** Well, we also had a Fourth Amendment  
8 claim he came into the hotel room without consent and violated  
9 his Fourth Amendment right to search and seizure and -- but  
10 again, he would know that that happened at the moment it  
11 happened whether or not these were corrupt or non-corrupt law  
12 enforcement officers.

13 **MR. HENRICHSON:** And Judge, they can't sue -- I mean,  
14 I've never heard of a cause of action for suing to recover for  
15 the theft of marijuana.

16 **THE COURT:** Well, most people don't sue for that, but  
17 I don't know that you can't.

18 **MR. ALAMIA:** Judge, if I may --

19 **THE COURT:** I don't know if you can.

20 **MR. HENRICHSON:** It may be a public policy, Judge,  
21 against that it's a cause of action.

22 **MR. ALAMIA:** Judge --

23 **THE COURT:** You're right. I mean, it may be but, I  
24 mean, maybe it was on its way to Colorado where it's legal.

25 **MR. ALAMIA:** If I may -- Judge, under the State

1 Constitution and under the Federal Constitution --

2 **THE COURT:** Uh-huh -- right.

3 **MR. ALAMIA:** -- the taking of liberty and freedom --

4 **THE COURT:** Right.

5 **MR. ALAMIA:** -- is a constitutional violation.

6 **THE COURT:** Uh-huh.

7 **MR. ALAMIA:** Okay? And we're saying --

8 **THE COURT:** You get two years to make -- to file suit  
9 on it.

10 **MR. ALAMIA:** Well, no, not necessarily, Judge,  
11 because --

12 **THE COURT:** Not necessarily; you're right.

13 **MR. ALAMIA:** -- they did not become aware that these  
14 constitutional issues or constitution violations had occurred  
15 until they indicted these people --

16 **THE COURT:** But don't they know at --

17 **MR. ALAMIA:** -- and the procedure that they used in  
18 the process of arresting these people was illegal.

19 **THE COURT:** But don't they know at the time that,  
20 "I've been assaulted and I was just sitting here minding my own  
21 business. I didn't need to be kicked in the gut or slapped in  
22 the face. I know that now. The moment it happened -- I know  
23 the moment it happened that I didn't give this officer consent  
24 to come into my hotel room and he just kicked the door down and  
25 came in, anyway, and then he beat me --

1           **MR. ALAMIA:** Another thing, Judge --

2           **THE COURT:** -- until I told him that the marijuana  
3 was in the next room."

4           **MR. ALAMIA:** Another thing is that the District  
5 Attorney of Hidalgo County --

6           **THE COURT:** Uh-huh.

7           **MR. ALAMIA:** -- had indicated that any cases that  
8 were convicted or pending in reference to the Panama Unit that  
9 he's contemplating dismissing or expunging the record if they  
10 already pled.

11           **THE COURT:** Uh-huh.

12           **MR. ALAMIA:** Which, here again, goes back to the  
13 constitutional issue that these people, our clients, were not  
14 aware until these people were indicted that they were using  
15 these type of tactics in the process of arresting them.

16           **THE COURT:** But your client would know that they used  
17 a tactic that was -- that either was excessive force or  
18 violated their Fourth Amendment right when they kicked in the  
19 door without, you know, did the search without consent. They  
20 would know that at the time.

21           Now, the reason -- I mean, there may be some  
22 constitutional infirmity to the criminal convictions if they  
23 were done in violation of some constitutional right and that,  
24 perhaps, is why the District Attorney is considering expunging  
25 those or dismissing those because he may now know that there

1 was some constitutional violations and so those are  
2 constitutionally infirm.

3 But your client still has two years within which to  
4 file suits on that and unless there was some claim they didn't  
5 know they had, there's some tolling aspect of that, and  
6 incarceration isn't one of them; although in some states  
7 incarceration tolls limitation but not in Texas.

8 **MR. ALAMIA:** Will you give me an opportunity to brief  
9 it before you make a ruling in detriment to my client if the  
10 Court's leaning that way?

11 **THE COURT:** Well, it seems sort of the obvious  
12 decision here, and so if you want a final opportunity to brief  
13 that and maybe mount an argument about tolling or why your  
14 client wouldn't have known at the time of the arrests and  
15 beatings that they didn't have these constitutional claims,  
16 then I'll give you time to do that.

17 **MR. ALAMIA:** All right.

18 **THE COURT:** How much time do you think you need to do  
19 that?

20 **MR. ALAMIA:** Give me at least 30 days?

21 **THE COURT:** All right. I'll give you 30 days, then.  
22 We'll give you a month.

23 So, I'm not going to rule on your motion to intervene  
24 yet until we resolve that, because if I resolve that against  
25 you then I would just be denying your motion to intervene.



1 It's not that I would be ruling on a constitutional or  
2 limitations claim. I wouldn't get to that point. That's sort  
3 of a merits -- I would just say I'm not going to let you come  
4 into this lawsuit because I know your case is already time  
5 barred.

6 **MR. ALAMIA:** Can you give me 60 days?

7 **THE COURT:** You're going to really dig hard?

8 **MR. HENRICHSON:** Judge, he's had two months already.

9 **THE COURT:** I mean, it doesn't really matter, because  
10 I'm not letting you in if you want to just stand outside the  
11 courtroom door basically with your client's claim waiting to  
12 come in --

13 **MR. ALAMIA:** Well, give me at least 45 days.

14 **THE COURT:** I can give you six weeks to do that.

15 **MR. ALAMIA:** All right.

16 **THE COURT:** So, you won't be participating in the  
17 case for six weeks. And there's other parts of the case that I  
18 need to get moving along. So, you'll have six weeks then to  
19 brief --

20 **MR. ALAMIA:** What's the deadline? Can you give me a  
21 deadline, Judge?

22 **THE COURT:** -- that issue. I'll give you a written  
23 order with a date.

24 **MR. ALAMIA:** Oh, okay.

25 **THE COURT:** I don't have a date here. But you'll get

1 a written order to that with a date. All right. So, that's  
2 your two clients.

3 So, now let's move on to the other plaintiffs -- I'm  
4 going to say there's sort of two sets of them -- that are  
5 already in the case and there is a couple of requests. Let's  
6 see. The easiest one is there's a request to sever them out,  
7 the Shumakers and the Perez's, saying these were two  
8 independent incidents. But my concern is that if I sever them  
9 out, then you might have some inconsistent jury findings. We  
10 may find, for example, that there was no customer policy in one  
11 case and that in another case we might find that there was,  
12 that the fact that these agents -- these rogue officers -- had  
13 been doing these things for such a long time that it was known  
14 to the policy makers, the sheriff being a policy maker. They  
15 might find yes, and make a positive finding in that regard.

16 And so, I can't -- I'm worried about two inconsistent  
17 findings by a jury over the same conduct. And to me,  
18 therefore, the case should be kept together. Any other people  
19 with these similar claims, they all arise out of whether or not  
20 the Panama Unit and what it was doing illegally was something  
21 that was known to and acquiesced by the sheriff, the policy  
22 maker, or the City of Mission police chief.

23 And then, of course, there's this whole argument that  
24 I think the sheriff says, "No, I wasn't in control of them,"  
25 and the City says, "Yes, you were. We have a written document

1 to that effect." So, you have the City saying it's the  
2 sheriff's -- these are the sheriff's rogue agents and the  
3 sheriff saying, "No, these are the City's rogue agents." So,  
4 we're going to have a little internal fight between the  
5 defendants, one saying, "No, it's the County's problem," and  
6 the County saying, "No, it's the City's problem."

7 And I just -- I can't have inconsistent jury  
8 findings. It would make no sense. So, I'm going to keep the  
9 case together for the time being. Maybe after discovery it's  
10 something I may reconsider on a trial. But it seems to me  
11 there are really good policy reasons for why the case should  
12 remain together, even though they are separate incidents. They  
13 do have this common question of law and common facts pertaining  
14 to that question of law that I think merit them staying  
15 together. All right. So, that's the severance issue.

16 There was also -- do you have a motion to dismiss? I  
17 can't remember.

18 **MR. HENRICHSON:** Yes, your Honor.

19 **MS. LEEDS:** Yes, both of us.

20 **THE COURT:** Both of you have motions to dismiss.

21 **MR. HENRICHSON:** Both of us do. But she has -- I  
22 think Mission has a 12(b)(6) and I have a 12(b)(1), but they're  
23 basically the same issues, I think.

24 **THE COURT:** All right. I probably just need to look  
25 at those a little closer. I mean, the Court has the benefit of

1 a lot of sworn testimony before it that may not be in this  
2 record, but is in this record.

3 **(Laughter)**

4 And so, it is not likely that this case is going to  
5 be dismissed. I mean, it's not. I know too much. I know  
6 there's sufficient evidence. Again, there only needs to be  
7 some evidence. It's a very slight burden -- some evidence to  
8 show that this was a policy or practice and the Court is aware  
9 already of substantial testimony in the record that this was a  
10 policy condoned by policy makers. But I need to just look  
11 specifically at what you're asking -- maybe the Court can  
12 narrow some of these issues.

13 **MR. HENRICHSON:** For example, Judge, we've said that  
14 the sheriff individually should be dismissed, that he's here as  
15 --

16 **THE COURT:** Right. There's no evidence of him  
17 personally --

18 **MR. HENRICHSON:** No, he's here as a representative of  
19 the County and they have an election. They've sued them both.  
20 That means they have to -- the sheriff has to be dismissed  
21 under their claims and that's a part of our motion to dismiss.

22 **THE COURT:** Because he is a policy maker -- I mean,  
23 nobody's alleging that he personally participated in any of the  
24 two incidents involving either the Shumakers or the Perez's,  
25 right?

1           **MR. GRISSOM:** Not yet, but I don't have discovery on  
2 those issues, your Honor. That's why we have the pretrial  
3 scheduling order. What became apparent to me in these motions  
4 to dismiss is that there's information being acted upon by  
5 their attorneys that I'm not aware of.

6           **THE COURT:** Well, some of the -- the lawyer -- Mr.  
7 Henrichson requested transcripts of the criminal trial. Has  
8 that --

9           **MR. HENRICHSON:** That's correct.

10          **THE COURT:** Has that been produced to you?

11          **MR. HENRICHSON:** I haven't even received them yet,  
12 Judge.

13          **MR. GRISSOM:** I've received a copy, but I don't have  
14 the transcripts. I could share that with you.

15          **THE COURT:** You received a copy of --

16          **MR. GRISSOM:** Well, no, I didn't get the entire  
17 criminal trial, just got some of the testimony.

18          **THE COURT:** You got a transcript or just an audio  
19 recording?

20          **MR. GRISSOM:** Just an audio.

21          **THE COURT:** Okay. So, somebody burned a CD for you,  
22 which we do when anybody asks. Okay. But that would need to  
23 be transcribed in a form for the Court to consider as part of  
24 this record. Unless you all want to just stipulate that  
25 whatever discovery or testimony was in the other case will be

1 part of this record. It's something you all might think about  
2 so that you don't duplicate the questioning of witnesses.

3 **MR. HENRICHSON:** Since the issues are so different,  
4 Judge, I just don't think there's any way that I can do that.  
5 I think there's also the issue of prejudice. It's bad enough  
6 to have all this publicity, but, you know, further, I wasn't  
7 here. We didn't participate.

8 **THE COURT:** Sure. Let me --

9 **MR. HENRICHSON:** I'm just getting ready to get some  
10 of the testimony from the record.

11 **THE COURT:** Now, some of the -- there are no --  
12 you've only individually sued the sheriff, but you don't allege  
13 that he individually did any of these things.

14 **MR. GRISSOM:** Correct.

15 **THE COURT:** Are you not concerned, Mr. Grissom, that  
16 you need to name individual persons who you contend violated  
17 your client's civil rights in case the jury were to find that  
18 this wasn't part of some policy of the County or the City?

19 **MR. GRISSOM:** I didn't do that in my pleadings, your  
20 Honor, because I didn't have sufficient information to do that.

21 **THE COURT:** Well, but you know who the ones are that  
22 came in and, whatever, stole jewelry from the Perez's. I mean,  
23 you know exactly who the persons are, certainly now, especially  
24 if you've requested some of the transcript. That was discussed  
25 by numerous witnesses in the trial.

1           **MR. GRISSOM:** I haven't had the opportunity to do all  
2 that. And I also need discovery from the defendants before I  
3 can determine which individuals may be responsible. You know,  
4 I have insinuations. I have people who have told me about  
5 specific things, but I don't have any proof. I don't have any  
6 deposition testimony --

7           **THE COURT:** Well, but you know --

8           **MR. GRISSOM:** -- that would lead me to that, to do  
9 that, make that step.

10          **THE COURT:** -- you know who was there. I mean, you  
11 know which agents went in. You know there was a --

12          **MR. GRISSOM:** Well, we know which agents were there,  
13 but we don't know what happened after that or around that and I  
14 have -- again, I have insinuations about the surrounding  
15 activity and what went on, but until I get further discovery I  
16 won't know the --

17          **THE COURT:** Well, I suggest that you listen to the  
18 transcript, because there was lots of explanation of exactly  
19 what happened and exactly what happened afterwards. Some of  
20 the people involved in it, I believe the person who actually  
21 was the one who stole the jewelry testified in the trial, if I  
22 recall. I'm not exactly sure.

23                 So, you have that. And then you had the sheriff  
24 talking about what he did afterwards regarding investigating  
25 that or not investigating it, as people might debate. All

1 right. So, again, at some point then just planning ahead you  
2 may add some additional individual defendants.

3 All right. Well, let me look at both of your motions  
4 to dismiss in more detail and perhaps the Court can narrow down  
5 some of the issues and it also sounds like, Mr. Grissom, that  
6 you feel like you need some more time to marshal some evidence  
7 on those. So, I may allow you to do that or I may simply rule  
8 knowing the evidence that is out there that I know that you'll  
9 eventually marshal in deciding these issues.

10 All right. So, that being said, I need to issue a  
11 scheduling order so that we can get moving on this case and you  
12 all asked for a fair amount of time. I'm sorry. So, I have  
13 not prepared a scheduling order because I'm not sure how much  
14 time you all need. Do we think trial next summer -- it could  
15 be all put together by then?

16 I mean, one of the other problems is that all of you  
17 may want to take the depositions of some of these actors who  
18 are probably going to be in federal prison halfway across the  
19 country in a couple of months. So, you know, if you all want  
20 to do that before they leave town, you may want to do that. Of  
21 course, it may still -- a lot of them still have Fifth  
22 Amendment rights.

23 **MR. HENRICHSON:** That's exactly one of the problems.

24 **MR. GRISSOM:** That's part of my plan, too, your  
25 Honor.



1           **THE COURT:** But I think many would waive their  
2 rights, as they've already done, but I think some would not.

3           **MR. GRISSOM:** Yes, that's another problem.

4           **THE COURT:** But I don't know. I mean, they've all --  
5 all the ones involved in this lawsuit already pled guilty, but  
6 they have not been sentenced, so they still have Fifth  
7 Amendment rights.

8           **MR. HENRICHSON:** What are we looking for -- what  
9 timing are we looking at in terms of sentencing, Judge?

10          **THE COURT:** They are scheduled the middle of October  
11 to be sentenced. And I expect most of them will be sentenced  
12 then. I expect maybe a few are still doing things where  
13 they're not ready to be sentenced. But I think most of them --  
14 I think the ones involved in this would be ready by -- are  
15 going to be ready for sentencing.

16          **MR. HENRICHSON:** Then, also, Judge, if we wait until  
17 then it will also provide you time to make the ruling on the  
18 other --

19          **THE COURT:** Yes --

20          **MR. HENRICHSON:** -- the other defendants or  
21 interveners.

22          **THE COURT:** Right. But also, Mr. Grissom, if you're  
23 going to add people, you've got to do it quick.

24          **MR. HENRICHSON:** Judge, I'm thinking next September  
25 we ought to start with a scheduling order like that and then

1 see how it goes this year and see where we are and we can all  
2 then decide if we want to ask the Court for more time or not.

3 **THE COURT:** Does that seem reasonable, Mr. Grissom?

4 **MR. GRISSOM:** Yes. We have a lot of things to look  
5 at.

6 **THE COURT:** All right. And if you do come in, I  
7 assume you could be ready by then, as well. All right. So,  
8 then I'll give you a trial date of next September. Okay. I'll  
9 issue a scheduling order later this morning to that effect and  
10 it'll -- you'll have a discovery cut-off about a month before  
11 that. And I don't know that there's going to be any expert  
12 testimony required, but you'll have some expert deadlines, as  
13 well.

14 All right. So, I'll try get out an order pretty  
15 quick on the motions to dismiss, Mr. Grissom, and, again, I'll  
16 just implore you if you're going to add parties, you better do  
17 it quick or you're going to have a tough time adding them --  
18 getting them served later. So, I would suggest that you look  
19 at that issue and decide yes or no whether you want to add  
20 anybody.

21 All right. And then, I'll also give you an order  
22 giving you about six weeks to see if you can convince the Court  
23 about some tolling issue, which I think is probably the only  
24 thing you can rely on at this point to save these claims from  
25 the Court denying your request to intervene.

1           **MR. HENRICHSON:** Your Honor, I will also provide the  
2 Court with some additional information on the res judicata  
3 issue.

4           **THE COURT:** Yes, if you need to. I don't know that  
5 you really need to, unless -- because I think the statute of  
6 limitations is going to be dispositive. I don't really want to  
7 have to figure what did the judge mean when he said, "I grant  
8 the motion to dismiss" --

9           **MR. HENRICHSON:** That's fine, Judge.

10          **THE COURT:** I mean, I guess I could look at your  
11 motion --

12          **MR. HENRICHSON:** That's all I was thinking about.

13          **THE COURT:** I don't know if your motion had ten  
14 different things in it or only one. If it had only one, I  
15 could figure out which one the judge rested his decision on,  
16 but if it had ten different reasons, I'd be guessing. But I  
17 think, really, limitations is going to be dispositive. That's  
18 what I'm thinking.

19               Yes, Ms. Leeds?

20          **MS. LEEDS:** Yeah, your Honor, just to clarify the  
21 City issue on the prior lawsuit, the City was in the body, not  
22 in the style. The City was not mentioned in the style of the  
23 lawsuit.

24          **THE COURT:** Had the City ever been served?

25          **MS. LEEDS:** Yes.

1           **THE COURT:** Did the City file an answer?

2           **MS. LEEDS:** The City answered, yes.

3           **THE COURT:** Hm. All right, because I didn't -- I  
4 don't have all those pleadings. All right.

5           **MS. LEEDS:** I didn't, either.

6           **THE COURT:** So, all I could see was in the style of  
7 the case and the motion to dismiss, for example, there was just  
8 an individual, Mr. Trevino, and the County.

9           But again, I think the limitations issue is going to  
10 be the real issue and if somehow we get past that, I'll bring  
11 you back in and we can talk about then this --

12           **MR. HENRICHSON:** The other issues?

13           **THE COURT:** -- the other issue. All right. Thank  
14 you all very much. I'll get a scheduling order out later  
15 today. You're excused at this time.

16           **(Proceeding was adjourned at 10:44 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

January 31, 2014

TONI HUDSON, TRANSCRIBER